

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON  
FEBRUARY 1998 SESSION

**FILED**  
April 22, 1998  
Cecil Crowson, Jr.  
Appellate Court Clerk

STATE OF TENNESSEE, )  
 )  
 Appellee, )  
 )  
 VS. )  
 )  
 ROCKIE SMITH, )  
 )  
 Appellant. )

C.C.A. NO. 02C01-9702-CR-00066  
SHELBY COUNTY  
HON. JOHN P. COLTON, JR.  
JUDGE  
(Assault)

FOR THE APPELLANT:

FOR THE APPELLEE:

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-and-  
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OPINION FILED: \_\_\_\_\_

**AFFIRMED - RULE 20**

**JOHN H. PEAY,**  
Judge

## **OPINION**

The defendant was indicted in May 1995 on two counts of aggravated assault. A jury found him guilty of one count of simple assault. The trial judge sentenced him to eleven months, twenty-nine days in the county workhouse, but then suspended that sentence and placed the defendant on probation. In this appeal as of right, the defendant argues that the evidence presented at trial was not sufficient to support a conviction for simple assault. After a review of the record and applicable law, we find the evidence entirely sufficient and affirm the conviction pursuant to Rule 20 of the Court of Criminal Appeals.

The defendant's conviction stemmed from an incident in which he argued with his boss, Mark Bintz, at the Piggly Wiggly where he was employed in the meat department. Bintz testified that the defendant struck him twice in the face requiring him to seek medical attention and obtain stitches. The defendant, in turn, testified that Bintz had threatened him with a trash can and a box cutter, and the defendant had hit Bintz in self-defense.

A defendant challenging the sufficiency of the proof has the burden of illustrating to this Court why the evidence is insufficient to support the verdict returned by the trier of fact in his or her case. This Court will not disturb a verdict of guilt for lack of sufficient evidence unless the facts contained in the record and any inferences which may be drawn from the facts are insufficient, as a matter of law, for a rational trier of fact to find the defendant guilty beyond a reasonable doubt. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

Questions concerning the credibility of witnesses, the weight and value to be given to the evidence, as well as factual issues raised by the evidence are resolved by the trier of fact, not this Court. Cabbage, 571 S.W.2d 832, 835. A guilty verdict rendered by the jury and approved by the trial judge accredits the testimony of the witnesses for the State, and a presumption of guilt replaces the presumption of innocence. State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973).

This case simply hinged upon who the jury believed. That the jury chose not to believe the defendant's story of self-defense is certainly within the jury's province to do. It is the function of the jury to weigh the testimony of the witnesses and render a verdict accordingly. This verdict is fully supported by the evidence, thus, we find no reason to disturb the jury's finding of guilt. We affirm the judgment of the court below pursuant to Rule 20.

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JOHN H. PEAY, Judge

CONCUR:

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JOSEPH B. JONES, Judge

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THOMAS T. WOODALL, Judge